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16 Inc., et al. (complete list on last page)

17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**

19 IN RE KATZ INTERACTIVE CALL
20 PROCESSING PATENT LITIGATION

21 Case No. 2:07-ML-1816-B-RGK
22 (FFMx)

23 This pleading relates to:

24 Ronald A Katz Technology Licensing L P
25 v. Reliant Energy Inc, et al.,
26 2:07-cv-02096-RGK-FFM

27 Ronald A Katz Technology Licensing L P
28 v. TD Banknorth Inc., et al.,
2:07-cv-02099-RGK-FFM

29 Ronald A Katz Technology Licensing L P
30 v. Ahold USA Inc, et al.,
31 2:07-cv-02101-RGK-FFM

32 Ronald A Katz Technology Licensing L P
33 v. Time Warner Cable Inc., et al.,
34 2:07-cv-02134-RGK-FFM

35 **DEFENDANTS' JOINDER TO
36 OPPOSITION TO
37 PLAINTIFF'S MOTION TO
38 CLARIFY AND EXTEND
39 CERTAIN CASE
40 MANAGEMENT DEADLINES**

41 Before The Honorable R. Gary
42 Klausner

43 **DEFENDANTS' JOINDER TO OPPOSITION TO PLAINTIFF'S MOTION TO CLARIFY AND EXTEND
44 CERTAIN CASE MANAGEMENT DEADLINES**

1 Ronald A. Katz Technology Licensing,
2 L.P. v. Citibank, N.A., et. al.,
3 2:07-cv-2220-RGK-FFM
4 Ronald A. Katz Technology Licensing,
5 L.P. v. Discover Financial Services, Inc.,
et. al.,
6 2:07-cv-2250-RGK-FFM

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28 **DEFENDANTS' JOINDER TO OPPOSITION TO PLAINTIFF'S MOTION TO CLARIFY AND EXTEND
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1 The Joining Defendants¹ hereby join in the Opposition to RAKTL's Motion
2 to Clarify And Extend Certain Case Management Deadlines, filed by Liaison
3 Counsel, Howrey LLP, on December 28, 2007. The Joining Defendants offer this
4 separate joinder to address the misleading and inaccurate statements made by
5 RAKTL regarding compliance with their discovery obligations thus far in the case.
6

7 In its moving papers, RAKTL alleges that "virtually all of the Defendants in
8 the Delaware actions failed to meet the discovery deadline, with material gaps
9 remaining in most of the productions" (RAKTL Mem. (Doc. 885-2) at 3), and that
10 "many of the Defendants in the [Texas] cases have also been deficient in the
11 timeliness and completeness of their Core Discovery Obligations" (RATKL Joinder
12 (Doc. 891) at 2). To support these broad brush accusations, RAKTL identifies
13 various defendants that it accuses of discovery misconduct. In making such
14 accusations, however, RAKTL distorts both the factual record as well as the
15 monumental efforts undertaken by the defendants to comply with their discovery
obligations in this case.

16 For example, with regard to Ahold (Ahold U.S.A., Inc., Giant Food Stores,
17 LLC, Giant Food LLC, Giant of Maryland LLC, and The Stop & Shop Supermarket
18 Company LLC), Charter (Charter Communications, Inc., Charter Communications
19 Entertainment I, LLC, Charter Communications Holding Company, LLC, and
20 Charter Communications Operating, LLC), Duke (Duke Energy Corp. and Cinergy
21

22 ¹The Joining Defendants are Ahold U.S.A., Inc., Giant Food Stores, LLC, Giant
23 Food LLC, Giant of Maryland LLC, The Stop & Shop Supermarket Company LLC,
24 AOL, LLC, Compuserve Interactive Services, Inc., Netscape Communications
25 Corp., Charter Communications, Inc., Charter Communications Entertainment I,
26 LLC, Charter Communications Holding Company, LLC, Charter Communications
27 Operating, LLC, Dillard's Inc., Dillard Investment Co., Inc., Duke Energy
Corporation, Cinergy Corp., T-Mobile USA, Inc., Time Warner Cable Inc., Time
Warner NY Cable LLC, and Time Warner Entertainment Company, L.P.

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1 Corp.) and Time Warner (Time Warner Cable Inc., Time Warner NY Cable LLC,
2 and Time Warner Entertainment Company, L.P.), RAKTL simply lists them on a
3 chart (Rice Decl. (Doc. 885-3), Exh. H) compiled by counsel for RAKTL, in which
4 counsel claims to have “summarized” the status of Core Discovery from various
5 defendants. Despite listing Ahold, Charter and Duke on the chart, RAKTL fails to
6 identify a single deficiency in the provision of Core Discovery by these defendants
7 that would support its request to extend deadlines.² With respect to Time Warner,
8 RAKTL only makes generalized allegations of purported deficiencies, but then fails
9 to demonstrate how any of those alleged deficiencies materially impact its ability to
10 make the claim designations required by the Court’s Order.³

11 Similarly, RAKTL fails to specify why it is unable to comply with its
12 deadlines in the case as result of the conduct of AOL (AOL, LLC, Compuserve
13 Interactive Services, Inc., Netscape Communications Corp.), Dillard’s (Dillard’s
14

15 ² RAKTL identified - for the very first time - several purported deficiencies in
16 Charter’s production on the evening of December 21, 2007, after it had already filed
17 its motion to extend case deadlines. That letter, which in many instances seeks
18 information Charter does not have, is irrelevant to this dispute. RAKTL has
19 already acknowledged in its opening motion and supporting declaration, that there
20 is no alleged deficiency in the Charter production that would prevent RAKTL from
21 meeting its deadlines in this case. Indeed, had such a deficiency in Charter’s core
22 production existed, RAKTL would not have waited three months (and on the
23 deadline for its identification of the 16 asserted claims) to raise the issue for the first
24 time.

25 ³ Based on a meet and confer held on December 18, 2007, RAKTL’s allegations of
26 incomplete production by Time Warner are based on erroneous assumptions or an
27 incomplete document review. For example, with respect to Time Warner’s digital
28 phone services, RAKTL indicated that only a “handful of documents” had been
produced when it was actually demonstrated during the call that more than 32,000
pages of documents had been produced related to these services alone. Most of the
other categories of alleged deficiencies relate to categories of documents that do
not bear on RAKTL’s ability to designate its final claim groupings as required by
the Court’s Order (i.e. documents related to alleged cost savings, for example).

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1 Inc., and Dillard Investment Co., Inc.) and T-Mobile (T-Mobile USA, Inc.). These
2 defendants, however, separately address below RAKTL's complaints regarding
3 their discovery efforts.

4 **AOL**: In its "discovery chart," RAKTL alleges only that AOL has not
5 produced "[c]ertain voicemail documents and others," and that RAKTL "is drafting
6 a meet and confer letter." (Rice Decl. (Doc. 885-3), Exh. H at 3). RAKTL's
7 allegations that AOL has not produced some vague, non-specific categories of Core
8 Discovery are wholly inaccurate and appear to have been manufactured in an effort
9 to support RAKTL's present Motion.

10 In reality, AOL completed its Core Discovery document production on or
11 before September 27, 2007. *See Declaration of David M. Maxwell in Support of
12 Joinder to Opposition to Plaintiff's Motion to Clarify and Extend Certain Case
13 Management Deadlines, ¶ 4.* Since that time, RAKTL has never contacted AOL
14 regarding any alleged substantive deficiency in AOL's production. *Id.*, ¶ 5. To the
15 contrary, less than two weeks before filing the present Motion, RAKTL informed
16 AOL that RAKTL cannot find "anything wrong" with AOL's production. *Id.*, ¶ 6.
17 Moreover, although ten days have now passed since RAKTL's Motion was filed,
18 AOL has yet to receive the "meet and confer letter" RAKTL alleged it was drafting.
19 *Id.*, ¶ 10.

20 AOL long ago completed its Core Discovery document production and there
21 is no outstanding dispute between the parties regarding such production. The Court
22 should not credit RAKTL's attempt to manufacture a discovery dispute in order to
23 support its present Motion.

24 **Dillard's**: RAKTL alleges that Dillard's has failed to complete its
25 production of Core Documents in any of the eleven categories required by the
26 DCMO, and implies that Dillard's did not begin producing most of its core
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1 discovery documents until Special Master Quinn compelled them to do so. Nothing
2 could be further from the truth.

3 Dillard's not only produced *all* core discovery documents in its possession,
4 custody or control *before* RAKTL filed its motion to compel, but it did so by the
5 date RAKTL demanded that Dillard's produce such documents in order to avoid a
6 motion to compel. *See* Declaration of Robin L. McGrath in Support of Defendants'
7 Joinder to Opposition to Plaintiff's Motion to Clarify and Extend Certain Case
8 Management Deadlines, ¶¶ 18, 19 ("McGrath Decl."). Notwithstanding that
9 Dillard's met RAKTL's deadline, RAKTL moved to compel any way, undoubtedly
10 doing so in order to support its instant motion. *See id.*, ¶ 19. Indeed, in his Order on
11 RAKTL's motion, Special Master Quinn specifically recognized that since prior to
12 RAKTL's motion to compel, Dillard's has been "collecting documents in a
13 responsible and diligent way," apparently accepting Dillard's representation that all
14 core discovery (with the possible exception of some back up tapes Dillard's had
15 been working to restore, but which Dillard's has since confirmed do not contain
16 core discovery) had been produced before RAKTL's motion. *See* Discovery Special
17 Master's Order No. 13, December 18, 2007 (Doc. 887).

18 RAKTL's real complaint is not that Dillard's had to be compelled to produce
19 core discovery – because that is simply not the case. Rather, RAKTL's real
20 complaint is that Dillard's *does not possess* the core discovery RAKTL seeks.
21 Dillard's does not possess such documents because it sold the accused credit card
22 system, and all "books and records" relating to that system, to GE Capital
23 Consumer Card Co. and General Electric Capital Corporation ("GE") in 2004.
24 McGrath Decl., ¶ 12. Dillard's simply cannot be blamed for not producing
25 documents that it neither possesses nor controls.

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1 Dillard's not only sold the accused credit system to GE, but all of the
2 employees with direct knowledge of the systems left Dillard's with the GE
3 acquisition. (See Declaration of Stephen Richards, December 10, 2007 (Doc. 784),
4 ¶ 2). It is for this reason that Dillard's had difficulty determining whether or not
5 GE left any core discovery documents with Dillard's and if so, where such
6 documents may be located. When RAKTL complained about Dillard's initial Core
7 Discovery production, Dillard's made every effort to determine whether additional
8 documents exist. See McGrath Decl., ¶ 14, 15. Those efforts included Dillard's
9 going to the trouble and expense of retaining an outside vendor to restore a number
10 of tapes it had located, even though Dillard's had no way of knowing what server
11 the tapes came from or whether the tapes related in any way to the accused systems.
12 See *Id.*, ¶ 16, 17. The restoration process itself took around a month,
13 notwithstanding that the vendor was literally working 24 hours a day (a shift in
14 Georgia then a shift in London) to restore them. *Id.*, ¶ 17. Dillard's informed
15 RAKTL of this issue and promised it would provide any core discovery documents
16 it located on the tapes immediately after the restoration and review process was
17 complete, which it did. See *id.*, ¶¶ 16, 19.

18 And while Dillard's did locate and produce some additional documents after
19 the deadline for core discovery production, many of those documents were either
20 not core discovery or were duplicative of other documents produced. *Id.*, ¶¶ 15, 20.
21 Notably, even the few "core" discovery documents Dillard's produced after the
22 DCMO deadline are not the kind of documentation RAKTL really seeks –
23 documents that explain how the former credit card system was designed, functioned
24 or operated – because all of that documentation went to GE with the acquisition.
25 See *id.*, ¶ 12. Indeed, RAKTL's infringement contentions, served on December 26,
26 2007, did not cite to a single document Dillard's had produced. *Id.*, ¶ 23. Thus,
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1 RAKTL has both exaggerated and overstated the significance of any delay by
2 Dillard's in producing core discovery.

3 Moreover, some of the "delay" about which RAKTL complains is of
4 RAKTL's own doing. Specifically, it was not until December 18, 2007 that
5 RAKTL notified Dillard's of its intent to accuse an additional system other than
6 Dillard's credit card system. *Id.*, ¶ 10. In RAKTL's Complaint against Dillard's,
7 RAKTL's accusations of infringement focused solely on Dillard's credit card
8 system. *Id.*, ¶¶ 2, 3. Likewise, in its August 13, 2007 Preliminary Pre-discovery
9 Disclosure of Defendants' Accused Systems, the description of accused services
10 focused on Dillard's former credit card system, but in connection with that
11 description, RAKTL identified a number of telephone numbers that it claimed
12 accessed the credit card system, but in many cases did not. *Id.*, ¶¶ 4, 5. As late as
13 December 11, 2007, RAKTL's counsel admitted during a telephone hearing with
14 Special Master Quinn that they did not know one way or the other whether any of
15 the non-credit card systems were accused, as they had yet to complete their
16 investigation of such systems. *Id.*, ¶ 9. Importantly, RAKTL did not clarify its
17 intentions regarding Dillard's accused systems until December 18, when it
18 indicated that eight of the exemplary telephone numbers were *not* being accused,
19 but that one of the non-credit card systems was accused. *Id.*, ¶ 10. Accordingly,
20 given RAKTL's belated investigation and identification of this new system, it
21 cannot complain that Dillard's has not completed Core Discovery relating to this
22 system. Importantly, Special Master Quinn's Order did not order Dillard's to
23 produce documents related to this additional system. *See* Discovery Special
24 Master's Order No. 13, December 18, 2007 (Doc. 887).

25 **T-Mobile:** RAKTL alleges that T-Mobile's discovery deficiencies, along
26 with those of other defendants, have placed RAKTL in the "precarious position" of
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1 having to select 64 claims for all defendants with the potential for selecting claims
2 inapplicable to the defendant's accused systems. (RATKL Joinder (Doc. 891) at 8).
3 RAKTL's representations regarding the state of T-Mobile's Core Discovery
4 document production are not only misleading, but also irrelevant.

5 As the Court may recall, T-Mobile was originally sued by RAKTL in the
6 Eastern District of Texas – Texarkana Division on July 19, 2005 (“the *Citibank*
7 case”). During the over two years that the *Citibank* case was ongoing in Texas, T-
8 Mobile had engaged in an extensive document production process pursuant to the
9 Eastern District of Texas’s mandatory disclosure requirements. *See* Declaration of
10 Holly S. Hawkins in Support of Joinder to Opposition to Plaintiff’s Motion to
11 Clarify and Extend Certain Case Management Deadlines, ¶ 4 (“Hawkins Decl.”).
12 Indeed, RAKTL’s counsel recognized at the July 6, 2007 discovery hearing that the
13 *Citibank* case was a “very advanced, mature case” and that RAKTL was “not
14 seeking to expand the scope of document discovery” in that case. *See* Transcript of
15 July 6, 2007 Hearing before Hon. Frederick F. Mumm, Case No: 2:07-ML-1816-
16 RGK-FFM, pp. 61-62.

17 Significantly, prior to transfer of the *Citibank* case, RAKTL was limited to
18 18 representative claims, which RAKTL selected on July 14, 2006. Hawkins Decl.,
19 ¶ 5. RAKTL’s assertion that it now needs additional documents from T-Mobile to
20 select representative claims is contrary to this Court’s August 31, 2007 Order,
21 which ordered that, “[w]ith respect to the *Citibank* case, this Court orders that
22 Plaintiff proceed with no more than the 18 claim limit already selected.” (See
23 Order regarding claim limits, August 31, 2007 (Doc. 221), p. 5). Accordingly, any
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1 alleged failure by T-Mobile to produce certain discovery is wholly unrelated to
2 RAKTL's obligation to select claims against T-Mobile or any other defendant.⁴
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4 Further, RAKTL's allegations regarding T-Mobile's alleged failure to
5 produce certain source code files are similarly misleading. RAKTL complains
6 about "missing" source code files, when T-Mobile has repeatedly informed RAKTL
7 that it has provided RAKTL with all of the IVR source code in its possession.
8 Hawkins Decl., ¶ 8. Regarding source code in the possession of various third party
9 vendors, RAKTL has had almost two and half years to pursue any discovery from
third parties that it thinks it needs. *Id.*, ¶ 7.

10 Finally, on December 7, 2007, RAKTL for the first time provided a list of
11 thirty-three new applications for which it is requesting T-Mobile to produce source
12 code. *Id.*, ¶ 9. T-Mobile has informed RAKTL that it is investigating these newly
13 identified applications to determine their relevance to RAKTL's claims. *Id.* Some
14 of these newly demanded computer programs are clearly irrelevant, moreover,
15 including the software that runs T-Mobile's "Hotspots," which allow wireless
16 internet access from locations such as airports and coffee houses. *Id.*⁵ The newly-
17 minted discovery demands against T-Mobile are plainly manufactured to justify the
18 delay sought here.

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24 ⁴ Obviously, T-Mobile's document production must have been sufficient as of July
25 2006 for RAKTL to be able to select its 18 representative claims against T-Mobile.
26 ⁵ T-Mobile fails to see, and RAKTL has failed to explain, how the source code for a
wireless internet application – as opposed to any source code that may relate to the
routing of customer calls about the HotSpot service – has any relevance to
RAKTL's claims.

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3 Dated this 28th day of December, 2007

4
5 By: 

6 Patrick J. Flinn
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9 AOL, LLC, Compuserve Interactive
10 Services, Inc., Netscape Communications
11 Corp., Dillard's Inc., Dillard Investment
12 Co., Inc., Charter Communications, Inc.,
13 Charter Communications Entertainment I,
14 Charter Communications Holding
15 Company, LLC, Charter Communications
16 Operating, LLC, T-Mobile USA, Inc.,
17 Time Warner Cable Inc., Time Warner
18 NY Cable LLC, and Time Warner
19 Entertainment Company, L.P.

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